

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ALICE ASHBURN, ADMX. OF THE
ESTATE OF AARON M. RICHARDSON
2705 Carbon Avenue
P.O. Box 2053
Sandusky, OH 44870

Case No:

Judge

Plaintiff,

GENERAL NUTRITION CENTERS, INC.
300 Sixth Avenue
Pittsburgh, PA 15222

And

GNC CORPORATION
300 Sixth Avenue
Pittsburg, PA 15222

Defendants.

**DEFENDANTS GENERAL NUTRITION CENTERS, INC. AND
GNC CORPORATION'S NOTICE OF REMOVAL**

Subject to and without waiving any objection based on improper venue and lack of jurisdiction, and their right to file any other Rule 12 motion, Defendants General Nutrition Centers, Inc. (“GNCI”) and GNC Corporation (hereinafter “GNC”) file this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 and respectfully show the Court the following:

Statement of the Case

1. On September 7, 2006, Plaintiff Alice Ashburn, Administratrix of the Estate of Aaron M. Richardson (hereinafter "Plaintiff" or "Ashburn") filed a certain action against Defendants on behalf of the beneficiaries and other next-of-kin of Aaron Richardson asserting product liability and negligence theories. This action was filed under cause number 2006-CV-715 in the Court of Common Pleas, Erie County, Ohio and styled *Alice Ashburn, Admx. of the Estate of Aaron M. Richardson v. General Nutrition Centers, Inc., and GNC Corporation.*

2. The summons issued by the Erie County Clerk of Courts was served on Defendants by certified mail on September 22, 2006.

3. GNC and GNCI have filed this notice of removal within the thirty day period set forth in 28 U.S.C. § 1446(b).

Basis for Removal

4. Diversity of Jurisdiction. Removal of this case is proper under 28 U.S.C. § 1441(a) because the Court has original jurisdiction over this action since the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states. 28 U.S.C. § 1332(a)(1).

- a) Amount in Controversy. Although the Defendants dispute Plaintiff's allegations against them, the Complaint sets forth and involves an amount in controversy in excess of \$75,000.00.
- b) Complete diversity of the parties. The lawsuit is between citizens of different states:

- c) Plaintiff Alice Ashburn's address is 2705 Carbon Avenue, P.O. Box 2053, Sandusky, Ohio 44870. (Complaint, p. 1)
- d) Defendant GNC is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania.
- e) Defendant GNCI is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania.

Accordingly, defendants may remove this case under 28 U.S.C. § 1332(a)(1). Removal to this court is proper under 28 U.S.C. § 1441(a) because this district and division embrace Erie County, Ohio, the place in which the removed action has been pending.

5. State Court Documents. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings and orders served upon the defendants are attached to this notice as Exhibit A, entitled State Court Pleadings. There have been no filings or proceedings in the state court action other than the filing of plaintiff's Complaint and the issuance of Summons herein.

6. Notice to State Court and Plaintiff. Pursuant to 28 U.S.C. § 1446(d), a copy of the written notice addressed to the adverse party and the Court of Common Pleas, Erie County, Ohio is attached hereto as Exhibit B.

7. A copy of the Civil Cover Sheet is attached as Exhibit C.

8. All defendants consent to and join in this removal.

For these reasons, Defendants request that the United States District Court for the Northern District of Ohio, Western Division, accept this Notice of Removal, that it assume

jurisdiction of this cause, and that it issue such further orders and processes as may be needed to bring before it all necessary parties.

Respectfully submitted,

/s/ Christopher M. Marinko
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Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2006, a copy of the forgoing Notice of Removal was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the court's system.

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